

SENATE BILL NO. 482

INTRODUCED BY J. ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT A FELONY OFFENSE FOR CERTAIN SEXUAL OFFENDERS TO RESIDE, WORK, LOITER, OR TRAVEL WITHIN CERTAIN GEOGRAPHICALLY RESTRICTED AREAS AND PROVIDING FOR THE IMPLEMENTATION OF THOSE RESTRICTIONS; PROVIDING A PENALTY; REQUIRING THE DEPARTMENT OF CORRECTIONS TO ADOPT RULES; AND AMENDING SECTIONS 46-18-255, 46-23-520, AND 53-1-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Geographic restrictions applicable to certain sexual offenders --**

penalty. (1) Except as provided in [section 3] or 53-1-203(5) and (6), a sexual offender may not establish a residence or any other living accommodation or accept regular employment within 500 feet of the property on which any school or day care facility is located.

(2) Except as provided in [section 3] or 53-1-203(5) and (6), a sexual offender may not establish a residence or any other living accommodation or accept regular employment within 500 feet of the property on which any of the offender's former victims or the victims' immediate family members reside.

(3) A sexual offender may not establish a residence or any other living accommodation where a minor resides. However, a sexual offender may reside with a minor if the sexual offender is the parent, grandparent, or stepparent of the minor unless:

(a) the offender's parental rights were terminated or are in the process of being terminated as provided by law;

(b) the offender was convicted of a sexual offense in which any of the offender's minor children, grandchildren, or stepchildren were the victim;

(c) the offender was convicted of a sexual offense in which a minor was the victim and the minor resided with the offender at the time of the offense; or

(d) the sexual offender was convicted of a sexual offense involving a child, regardless of whether the offender was related to or shared a residence with the child.

(4) A sexual offender may not willfully or knowingly come within 500 feet of a former victim of the offender

1 or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former
2 victim or a member of the victim's immediate family.

3 (5) Changes to property within 800 feet of a sexual offender's address registered pursuant to Title 46,
4 chapter 23, part 5, that occur after a sexual offender establishes residency or accepts employment may not be
5 used as the basis for finding that a sexual offender is in violation of subsection (1) or (2).

6 (6) (a) A sexual offender, after having been convicted of a sexual offense involving a child, may not loiter
7 on or within 500 feet of any property on which there is a school, day care facility, playground, developed or
8 improved park, bike or walking path, athletic field, athletic facility, or business or facility having a principal purpose
9 of caring for, educating, or entertaining minors.

10 (b) A sexual offender does not violate this subsection (6) unless the offender has first been asked to
11 leave a prohibited location by a person authorized to exclude the offender from the premises. An authorized
12 person includes a law enforcement officer, an owner or manager of the premises, a principal or teacher if the
13 premises is a school or day care facility, or a coach if the premises is an athletic field or facility.

14 (7) A sexual offender, after having been convicted of a sexual offense involving a child, may not accept,
15 maintain, or carry on regular employment on or within 500 feet of a school, day care facility, playground,
16 developed or improved park, bike or walking path, athletic field or facility, or business or facility having a principal
17 purpose of caring for, educating, or entertaining minors.

18 (8) A sexual offender who knowingly violates a provision of this section is guilty of a felony and upon
19 conviction shall be punished as provided in 46-18-213.

20 (9) As used in this section, the following definitions apply:

21 (a) "Day care facility" has the meaning provided in 52-2-703.

22 (b) "Loiter" means to enter or remain on property while having no legitimate purpose therefor or, if a
23 legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

24 (c) "Sexual offense" has the meaning provided in 46-23-502.

25 (d) "Sexual offender" means an individual who has committed a sexual offense and is designated as a
26 level 2 or 3 sexual offender pursuant to 46-23-509.

27

28 **Section 2.** Section 46-18-255, MCA, is amended to read:

29 **"46-18-255. Sentence upon conviction -- restriction on employment and residency.** (1) A judge
30 sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or

1 deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational
 2 prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of
 3 further offenses by the defendant.

4 (2) In addition to any restriction on employment imposed under subsection (1), a judge sentencing a
 5 person convicted of a sexual offense involving a minor and designated as a level 2 or 3 offender under 46-23-509
 6 shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant
 7 restrictions on the defendant's residency in the proximity of a private or public elementary or high school,
 8 preschool as defined in 20-5-402, licensed day-care center, church, or developed or improved park maintained
 9 by a city, town, or county.

10 (3) Restrictions imposed pursuant to this section must be compatible with the restrictions and offenses
 11 provided for in [section 1]."

12
 13 **NEW SECTION. Section 3. Department to conduct public hearing and adopt rules for exemption**
 14 **to geographic restrictions.** Before a sexual offender may be allowed to reside or work within the boundaries
 15 of a place or area from which the offender is otherwise excluded pursuant to [section 1] or 46-18-255, the
 16 department shall conduct a public hearing, upon that notice as the department may reasonably determine,
 17 including at least two notices published in a newspaper in general circulation in the community where the offender
 18 may reside or work, to provide notice to residents or businesses in the community of the possible location of the
 19 place or area where the sexual offender may reside or work. The department shall consider the comments
 20 obtained at the hearing in making a determination on whether to allow the location of the offender within the place
 21 or area from which the offender would otherwise be excluded. Within 5 days of conducting the hearing, the
 22 department shall provide notice to the offender and the appropriate chief of police and county sheriff of the
 23 department's decision concerning where the offender may reside or work and any restrictions imposed pursuant
 24 to this section.

25
 26 **Section 4.** Section 46-23-520, MCA, is amended to read:
 27 **"46-23-520. Sexual or violent offender community education curriculum.** (1) The department of
 28 justice shall develop a statewide community education curriculum regarding release of sexual or violent offenders
 29 into a community.

30 (2) The curriculum developed under subsection (1) must contain information:

1 (a) for communities and neighborhoods regarding the provisions of this part as it relates to sexual or
 2 violent offenders, including the rights of residents of a community into which a sexual or violent offender is
 3 released and the duties and roles under this part of the department, law enforcement agencies, and the offender;

4 ~~and~~

5 (b) for families and children regarding personal safety, including potential warning signs that may help
 6 to avoid victimization; and

7 (c) for communities, neighborhoods, families, and children regarding the restrictions imposed by [section
 8 1].

9 (3) The curriculum developed under this section must be made available to law enforcement agencies,
 10 school districts, local governments, and other entities determined by the department of justice to be in a position
 11 to educate the public on the subject of the release of a sexual or violent offender into a community. The
 12 curriculum may be disseminated by any appropriate means, written or electronic, including by the internet."
 13

14 **Section 5.** Section 53-1-203, MCA, is amended to read:

15 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

16 (a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for
 17 the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of
 18 residential methamphetamine treatment programs, and rules for the admission, custody, transfer, and release
 19 of persons in department programs except as otherwise provided by law. However, rules adopted by the
 20 department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The
 21 rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any
 22 existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a
 23 prerelease center may not be sited at any location without community support. The prerelease siting,
 24 establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a
 25 determination of community support or objection to the siting of a prerelease center in the area determined to be
 26 impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted
 27 pursuant to Title 2, chapter 3.

28 (b) subject to the functions of the department of administration, lease or purchase lands for use by
 29 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
 30 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown

1 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
2 persons confined in correctional facilities;

3 (c) contract with private, nonprofit Montana corporations to establish and maintain:

4 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
5 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
6 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
7 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
8 centers must be operated in coordination with other department correctional programs. This subsection does not
9 affect the department's authority to operate and maintain prerelease centers.

10 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
11 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
12 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
13 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

14 (d) use the staff and services of other state agencies and units of the Montana university system, within
15 their respective statutory functions, to carry out its functions under this title;

16 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
17 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
18 in correctional facilities or programs;

19 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
20 education of felony offenders;

21 (g) administer all state and federal funds allocated to the department for youth in need of intervention
22 and delinquent youth, as defined in 41-5-103;

23 (h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

24 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
25 of the specific information, by category, related to youth in need of intervention and delinquent youth in
26 out-of-home care facilities;

27 (j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention
28 and who are committed to the department;

29 (k) administer youth correctional facilities;

30 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

1 (m) use to maximum efficiency the resources of state government in a coordinated effort to:
2 (i) provide for delinquent youth committed to the department; and
3 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
4 administered by the department.

5 (2) The department and a private, nonprofit Montana corporation may not enter into a contract under
6 subsection (1)(c) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract
7 do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years,
8 the department shall submit the proposed contract to the legislative audit committee. The legislative audit division
9 shall review the contract and make recommendations or comments to the legislative audit committee. The
10 committee may make recommendations or comments to the department. The department shall respond to the
11 committee, accepting or rejecting the committee recommendations or comments prior to entering into the
12 contract.

13 (3) The department of corrections may enter into contracts with nonprofit corporations or associations
14 or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth
15 correctional facilities.

16 (4) The department may contract with Montana corporations to operate a day reporting program as an
17 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
18 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
19 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
20 with any conditions of probation, such as drug testing.

21 (5) [Section 1] does not apply to a facility operated on October 1, 2007, by the department of corrections
22 or a contractor with the department as a prerelease facility. The department shall adopt rules specifying a facility
23 to which this subsection applies.

24 (6) The department may also exempt from the requirements of [section 1] a prerelease facility to be
25 operated by the department of corrections or a contractor with the department beginning after October 1, 2007.
26 The department shall adopt rules specifying facilities to which this subsection applies. As part of the process of
27 granting an exemption to a prerelease facility constructed or designated after October 1, 2007, the department
28 shall hold at least one public hearing in the community in which the facility is to be located. Except as provided
29 in this section, the requirements of [section 3] apply to a hearing held and a determination made by the
30 department pursuant to this subsection. If a hearing is held and an exemption is granted pursuant to this

1 subsection, a hearing pursuant to [section 3] need not be held for the purposes of determining the place where
2 an offender is to reside if the offender resides at the prerelease center that was the subject of the hearing
3 pursuant to this subsection."

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5 **NEW SECTION. Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
6 integral part of Title 45, chapter 5, part 5, and the provisions of Title 45, chapter 5, part 5, apply to [section 1].

7 (2) [Section 3] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the
8 provisions of Title 46, chapter 23, part 5, apply to [section 3].

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